

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

\* \* \* \* \*

ROBERT J. CAZIER AND JANE C. )  
CAZIER, PARENTS OF ROBERT LEE )  
CAZIER AND ANDREA JANE CAZIER, )

Appellants, )

vs. )

OSPI 221-93

TRUSTEES OF TOWNSEND ELEMENTARY )  
SCHOOL DISTRICT NO. 7, BROADWATER )  
COUNTY, MONTANA; AL McMILIN, )  
SUPERINTENDENT OF TOWNSEND SCHOOLS; )  
AND SHERRY SCOFIELD, CLERK OF )  
SCHOOLS; AND THE BROADWATER COUNTY )  
TRANSPORTATION COMMITTEE, )

**DECISION AND ORDER**

Respondents. )

\* \* \* \* \*

**PROCEDURAL HISTORY OF THIS APPEAL**

Robert and Jane Cazier are appealing a decision of the Broadwater County Transportation Committee. The Caziers live in Townsend Elementary District No. 7, Broadwater County. Their two children attend school out of district at Three Forks Elementary District J-24, Gallatin County. In school year 1992-93, Jane Cazier, the Townsend and the Three Forks Trustees, and the Broadwater County Superintendent signed an elementary attendance agreement for the Cazier children to attend Three Forks Elementary. During school year 1992-93, Townsend Elementary paid the Caziers to transport their children to the Three Forks bus stop.

In January of 1993, the Townsend Trustees decided that in the 1993-94 school year, the District would no longer pay discretionary

out-of-district transportation costs. They sent a letter to all affected parents.

The Caziers appealed the decision to the Broadwater County Transportation Committee who, after a hearing March 18, 1993, affirmed the Townsend Trustees' decision.' The Caziers appealed to this Superintendent but none of the parties filed briefs.

#### STANDARD OF REVIEW

This Superintendent's review of a county transportation committee decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in Rule 10.6.125, ARM. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

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<sup>1</sup> No order was written by the Committee. Two points should be noted in this appeal. One, if this dispute had begun after July 1, 1993, the proper appeal would be to the Broadwater County Superintendent because the matter would be handled as an appeal of an out-of-district attendance agreement. See §§ 20-5-320(2)(b) and 20-5-322, MCA. Two, after the effective date of ARM 10.6.119, March 12, 1993, all orders of transportation committees must be in writing.

Because this hearing was held so close to the effective date of ARM 10.6.119 and because the Broadwater County Transportation Committee's actions were correct on the merits, the requirement of a written order will not be enforced in this case.

The State Superintendent may not substitute her judgment for that of a county transportation committee as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." State Compensation Mutual Insurance Fund v. Lee Rost Logging, 252 Mont. 97, at 102, 827 P.2d 85, at 88 (1992).

#### **DECISION AND ORDER**

The decision of the Broadwater County Transportation Committee is supported by substantial, credible evidence. The order of the Committee is AFFIRMED.

#### **MEMORANDUM OPINION**

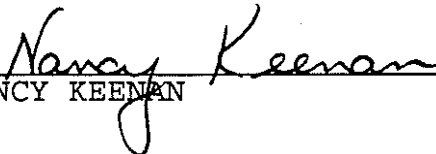
Section 20-10-132(1)(d), MCA, states in part that transportation committees must "conduct hearings to establish the facts of transportation controversies . . . and act on such appeals on the basis of the facts established at such hearing." The Broadwater County Transportation Committee gave the Caziers an opportunity to establish the facts about Townsend Elementary District's application of its policy of not paying transportation costs for students leaving the district.

The decision of the Townsend Trustees was discretionary. For the Caziers to set it aside they would have to show that the Trustees abused their discretion. The record of the hearing does not show evidence of abuse of discretion.

Townsend Superintendent Al McMilin testified that the District was applying its policy consistently. In **1993-94** and later years, the District would provide transportation service to eligible transportees attending school in the district but it would no longer pay any mileage costs to transport children to a Three Forks bus stop. The Caziers did not establish that the District has applied this policy in an arbitrary or capricious manner.

The Caziers have established that the Trustees exercised their discretion in a manner that the Caziers do not agree with but they have not established a violation of the transportation statutes by the Townsend Trustees. Trustees -- not transportation committees, the Office of Public Instruction or the courts -- are responsible for the basic operation of Montana's schools. Trustees are elected through the democratic process and constitutionally charged with the responsibility of managing Montana's schools. If a person does not agree with a trustees' management decision, often the avenue to correct that is the political process, not appeal to the county superintendent or the transportation committee.

DATED this 11 day of August, 1994.

  
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NANCY KEENAN

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**CERTIFICATE OF SERVICE**

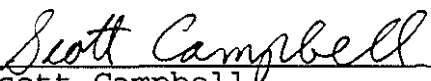
THIS IS TO CERTIFY that on this 12th day of August, 1994, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

Robert & Jane Cazier  
706 Highway 437  
Box 343  
Three Forks, Montana 59752

Elaine Gravely  
Broadwater County Supt.  
Box 489  
Townsend, Montana 59644

Board of Trustees  
Townsend Elem. Dist. #7  
Box N  
Townsend, Montana 59644

Al McMilin, Supt.  
Townsend Elem. Dist. #7  
Box N  
Townsend, Montana 59644

  
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Scott Campbell  
Paralegal-Assistant  
Office of Public Instruction

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